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C O N F I D E N T I A L SECTION 01 OF 02 SAN JOSE 000127

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TAGS: [PREL](#) [MASS](#) [ETRD](#) [EAID](#) [CS](#) [KICC](#)

SUBJECT: COSTA RICA SEEKS TO AVOID CONSEQUENCES OF NOT
SIGNING AN ARTICLE 98 AGREEMENT

REF: 05 SAN JOSE 2717

Classified By: Ambassador Mark Langdale for reasons 1.4 (b) and (d)

Summary

1. (C) President Pacheco on January 11 convoked his ministers of foreign affairs, foreign trade, and labor and the Costa Rican Ambassador to the U.S. to discuss with Ambassador and Polcouns the ramifications of the Nethercutt Amendment for Costa Rica. The GOCR officials were specifically concerned about the effect the loss of U.S. funding for trade capacity-building will have on implementation of the U.S.-Central American-Dominican Republic Free Trade Agreement (CAFTA-DR). They wanted to explore the possibility of a waiver from the prohibition in the Nethercutt Amendment or of using "creative accounting" to get around the law. Ambassador responded that neither proposal would work. Rather, he said, the GOCR and USG needed to focus on how to come together to sign an Article 98 agreement. End Summary.

Loss of ESF for Labor Programs

2. (C) Labor Minister Fernando Trejos phoned Polcouns on December 13 in a panic. He had just returned from meetings with USDOL in Washington where he was told that Costa Rica would not be eligible to receive a share of FY 2005 and FY 2006 funds for trade capacity-building programs in CAFTA-DR countries. The GOCR already had plans for spending FY 2005 funds to modernize the labor justice system, strengthen the labor ministry inspection system, and improve enforcement of laws against sex discrimination. Trejos asked Polcouns for a meeting on the subject under President Pacheco and Ambassador Langdale after the holidays.

3. (C) The meeting took place in the President's office on January 11. Along with President Pacheco and Labor Minister Trejos were Minister of Foreign Affairs Roberto Tovar, Acting Minister of Foreign Trade Doris Osterlof, and Costa Rican Ambassador to the United States Tomas Duenas. Trejos opened the meeting by explaining the importance of U.S. funding for the functioning of his ministry. He said that in 2003 then-USTR Zoellick announced a USD 7 million assistance package to improve labor standards in CAFTA-DR countries. That money, Trejos said, is being well spent in Costa Rica which he claimed had the highest labor standards in Latin America along with Chile. He said it was disturbing that Costa Rica, because of the Nethercutt Amendment, will not receive its proportional share of USD 19 million in FY 2005 Economic Support funds (ESF) to boost labor standards in CAFTA-DR countries; nor will Costa Rica receive FY 2006 ESF.

4. (C) Trejos said he had understood in Washington that Costa Rica would not get a waiver from the prohibition in the Nethercutt Amendment. He believed, however, there was another way to ensure that his ministry continued to receive critical funding. He suggested that the remaining funds in the USD 7 million program (which antedates and is therefore not subject to Nethercutt) be redirected to Costa Rica, since Costa Rica will get none of the USD 19 million package. Trejos said the shift in program funds would provide his ministry with an additional USD 4 million, and he claimed that the other CAFTA-DR countries were on board with such an arrangement. Ambassador Duenas referred to Trejos's plan as "creative accounting."

Concern About Effect on CAFTA-DR Ratification

5. (C) Duenas noted that trade capacity-building funds were key to the passage of CAFTA-DR in the United States and will also be important in Costa Rica. He said that the Bush Administration promised Democrats in Congress that effective programs would be put in place to improve labor standards in Central America. He added that USTR officials told him that money for trade capacity-building would not be subject to Article 98 prohibitions because it would come from "other baskets." (Note: Embassy subsequently checked with the Department to find out if USTR had indeed made any such commitment and was assured it had not.) Duenas said that if Costa Rica were to be denied trade capacity-building funds at the time CAFTA-DR ratification is being debated in the Legislative Assembly, "it would be a bad signal." Acting

Minister of Foreign Trade Osterlof added that, if the cut off of trade capacity-building funds becomes known to the press and public, it will be used by opponents of CAFTA-DR to further delay the ratification process.

Ambassador Urges Article 98 Agreement

16. (C) Ambassador responded that it was highly unlikely that the USG would either agree to a waiver under Nethercutt or consider shifting funds around to avoid the consequences of Nethercutt. Instead, the discussion should be about how the USG and GOCR could come together to sign an Article 98 agreement. If such an agreement could be signed, Costa Rica would again become eligible for ESF and U.S. military assistance, both of which are vital to cooperation between our two countries. Ambassador reminded Foreign Minister Tovar that the State Department stands ready to renew talks on Article 98 and is only awaiting the go-ahead from Costa Rica.

17. (C) Tovar said that the Rome Statute does not require party countries to surrender accused criminals to the International Criminal court (ICC) and that, whether or not Costa Rica signs an Article 98 agreement, the GOCR will refuse to turn over U.S. nationals. Tovar did not understand why Costa Rica is "being punished only for being a member of the court." He said the cutoff of U.S. military assistance was serious, but the cutoff of ESF even worse, and "it creates political problems for us." He said that the United States should take into account the close relations it has with Costa Rica and exempt Costa Rica from the prohibitions in the Nethercutt Amendment and American Servicemembers' Protection Act (ASPA). President Pacheco closed the meeting with a plea to Ambassador that he help Washington to understand Costa Rican concerns and motivations.

18. (C) On January 17, Tovar told Ambassador he was working on an "alternative" to Article 98 based on existing agreements between the United States and Costa Rica and existing Costa Rican law. He hoped to have a written proposal ready in two weeks.

Oscar Arias on Article 98

19. (C) During a meeting with Congressman Dan Burton and Ambassador on January 10, presidential candidate Oscar Arias asked about the effect on Costa Rica of not signing an Article 98 agreement. He did not say whether his administration, which is expected to take office on May 8, would have a different approach to Article 98 than has the Pacheco administration, but he did criticize U.S. "unilateralism," citing among other things U.S. refusal to join the ICC. After the meeting, however, Arias's running mate Laura Chinchilla asked for a copy of the U.S.-Colombia Article 98 agreement, which we have since provided her.

Comment

10. (C) This week of meetings brought us no closer to an Article 98 agreement with Costa Rica. The Pacheco administration is not focused on negotiating an agreement, but on how to get around the adverse effects of not having an agreement. Though we are already engaging Oscar Arias, Pacheco's probable successor, on the subject, we expect he is even more against Article 98 than Pacheco has been.

LANGDALE